



227882

PHYSICAL DOCUMENT

LPS-n227882-v1

CWA COMPLAINT

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Document Type: PLEADING

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Distribution List: Woolner, Rhodora (ENRD); Lattin, Sue (ENRD); Rose, Robert (ENRD);
Lu, Sarah (ENRD); Berman, Lisa (ENRD)

Fileroom: LPS - Main Justice

DJ#:

Case Name:

Court: CA N.D. Cal.; 9th Cir.

Notes: SCANNED/UNASSIGNED

Double-Sided:

Received Date: 5/6/2013

Urgent:

Oversize:

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DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

13 MAY -6 A11 :37

9 Attorneys for Plaintiff
10 CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a
14 501(c)(3) non-profit, public benefit
15 Corporation,

16 Plaintiff,

17 v.

18 UNI-TILE & MARBLE, INC., et al

19 Defendant.
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CASE NO. 3:13-cv-01949 NC

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

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CERTIFICATE OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 14426, Santa Rosa, CA 95402. On the date set forth below, I served the following described document(s):

**COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL
PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean
Water Act 33 U.S.C. § 1251, *et seq*)**

on the following parties by placing a true copy in a sealed envelope, addressed as follows:


Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

☒ (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Law Office of Jack Silver for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

☐ (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on May 1, 2013 at Santa Rosa, California.



Wojciech P. Makowski

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ORIGINAL
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RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

NC

8 **CV 13 1949**
Case No.:

9 CALIFORNIA RIVER WATCH, a
501(c)(3), non-profit, public benefit
10 Corporation,

11 Plaintiff,

12 v.

13 UNI-TILE & MARBLE, INC.; DOES
1-10, Inclusive,

14 Defendants.
15 _____/

**COMPLAINT FOR INJUNCTIVE RELIEF,
CIVIL PENALTIES,
RESTITUTION AND REMEDIATION**

(Environmental - Clean Water Act - 33 U.S.C. §
1251, *et seq.*)

16 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH by and through its attorneys, and
17 for its Complaint against Defendants UNI-TILE & MARBLE, INC. and DOES 1-10, Inclusive,
18 states as follows:

19 **I. JURISDICTION AND VENUE**

20 1. This is a citizens' action for relief brought by Plaintiff under the Federal Water
21 Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, ("Clean Water Act" or "CWA").

22 2. Subject matter jurisdiction is conferred upon this Court by CWA §505(a)(1), 33 U.S.C.
23 § 1365(a)(1) which states, in relevant part,

24 "any citizen may commence a civil action on his own behalf against any person
25 (including . . . any other governmental instrumentality or agency) who is alleged
26 to be in violation of (A) an effluent standard or limitation under this chapter or
27

1 (B) an order issued by the Administrator or State with respect to such standard
2 or limitation.” For purposes of CWA §505, “the term ‘citizen’ means a person or
3 persons having an interest which is or may be adversely affected.”

4 3. Plaintiff’s members reside in the vicinity of, derive livelihoods from, own property
5 in, and/or recreate on, in or near, or otherwise enjoy and benefit from the watershed and associated
6 natural resources near which the Defendants’ operations take place. The health economic,
7 recreational, aesthetic, and environmental interests of Plaintiff’s members have been, are being,
8 and will continue to be adversely affected by the Defendants’ unlawful violations as alleged
9 herein.

10 4. On February 13, 2013, Plaintiff provided notice of Defendants’ violations of the
11 Clean Water Act, and of its intent to file suit to: (a) Uni-Tile & Marble, Inc. (b) the Environmental
12 Protection Agency (“EPA,”) Federal and Regional, and (c) the State of California Water Resources
13 Control Board (“State Board”). A true and correct copy of Plaintiff’s Notice of Violations and
14 Intent to File Suit (“Notice”) is attached to this Complaint as EXHIBIT A and incorporated by
15 reference.

16 5. More than sixty (60) days have passed since the Notice was served. Plaintiff is
17 informed and believes, and on such information alleges, that neither the EPA nor the State of
18 California has commenced or is diligently prosecuting a court action to redress the violations
19 alleged in this Complaint. This action is not barred by any prior administrative penalty under CWA
20 §309(g), 33 U.S.C. § 1319(g).

21 **II. INTRODUCTION**

22 6. This complaint seeks relief for Defendants’ discharges of polluted stormwater from
23 Defendants’ tile, marble, and kitchen cabinetry production facility in Hayward, California into
24 waters of the United States in violation of the Act and the State of California’s General Permit for
25 Industrial Storm Water Discharges, State Board Water Quality Order No. 91-13-DWQ, as
26 amended by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ,
27

1 National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001,
2 (“General Permit”). Plaintiff contends Defendants’ violations of the monitoring, reporting,
3 discharge, and management practice requirements, and other procedural and substantive
4 requirements of the General Permit and the Clean Water Act are ongoing and continuous.

5 7. The failure on the part of persons and facilities such as Defendants and their
6 industrial facility to comply with stormwater requirements is recognized as a significant cause of
7 the continuing decline in water quality of the San Francisco Bay Area and associated waters. The
8 general consensus among regulatory agencies and water quality specialists is that storm pollution
9 amounts to more than half of the total pollution entering the aquatic environment each year. In
10 most parts of the San Francisco Bay Area, stormwater flows completely untreated through storm
11 drain systems or other channels directly to the waters of the United States.

12 **III. PARTIES TO THE ACTION**

13 8. Plaintiff CALIFORNIA RIVER WATCH is a 501(c)(3), non-profit, public benefit
14 corporation duly organized under the laws of the State of California, with headquarters and main
15 office in Sebastopol, California, dedicated to protect, enhance and help restore the groundwater
16 and surface water environs of California including, but not limited to its rivers, creeks, streams,
17 wetlands, vernal pools and tributaries. To further these goals, Plaintiff actively seeks federal and
18 state agency implementation of the Clean Water Act and other laws and, where necessary, directly
19 initiates enforcement actions on behalf of itself and its members.

20 9. Plaintiff’s members live in the San Francisco Bay area and use and enjoy the waters
21 into which Defendants have caused, are causing, and will continue to cause, pollutants to be
22 discharged. Said members have interests in the San Francisco Bay which interests have been, are
23 being, or may be adversely affected by Defendants’ violations of Clean Water Act as alleged in
24 this Complaint. Said members use the affected waters for recreation, sports, fishing, boating,
25 kayaking, swimming, hiking, photography, nature outings, and the like. The relief sought will
26 redress the injury in fact to Plaintiff and its members and the likelihood of future injury and
27

1 interference with the interests of said members. The relief sought herein will redress the harm to
2 Plaintiff resulting from Defendants' activities

3 10. Plaintiff is informed and believes, and on such information alleges, that Defendant
4 UNI-TILE & MARBLE, INC. is a corporation organized under the laws of the State of California,
5 registered with the Secretary of State to do business in the State of California, and is the owner and
6 operator of a tile, marble, and kitchen cabinetry production facility located at 21105-B Cabot
7 Boulevard in Hayward, California, which facility is the subject of this Complaint.

8 11. Plaintiff is informed and believes and on such information alleges that Defendants
9 DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and entities who are,
10 or were, responsible for, or in some way contributed to, the violations which are the subject of this
11 Complaint or are, or were, responsible for the maintenance, supervision, management, operations,
12 or insurance coverage of Defendants' facility. The names, identities, capacities, and functions of
13 defendants DOES 1 - 10, Inclusive are presently unknown to Plaintiff. Plaintiff shall seek leave
14 of court to amend this Complaint to insert the true names of said DOES defendants when the same
15 have been ascertained.

16 **IV. STATUTORY BACKGROUND**

17 12. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into
18 waters of the United States, unless such discharge is in compliance with various enumerated
19 sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by,
20 or in violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES")
21 permit issued pursuant to CWA § 402, 33 U.S.C. §1342.

22 13. CWA § 402(p) establishes a framework for regulating municipal and industrial
23 stormwater discharges under the NPDES program. 33 U.S.C. § 1342(p). States with approved
24 NPDES permitting programs are authorized by Section 402(p) to regulate industrial stormwater
25 discharges through individual permits issued to dischargers and/or through the issuance of a single,
26 statewide general permit applicable to all industrial stormwater dischargers. 33 U.S.C. § 1342(p).

1 Pursuant to CWA § 402, 33 U.S.C. § 1342, the Administrator of the U.S. EPA has authorized the
2 State Board to issue NPDES permits including general NPDES permits in California.

3 14. The State Board elected to issue a statewide general permit for industrial discharges.
4 The State Board issued the General Permit on or about November 19, 1991, modified the General
5 Permit on or about September 17, 1992, and reissued the General Permit on or about April 17,
6 1997, pursuant to CWA § 402, 33 U.S.C. §1342(p).

7 15. In order to discharge stormwater lawfully in California, industrial dischargers must
8 comply with the terms of the General Permit or have obtained and complied with an individual
9 NPDES permit. CWA § 301(a), 33 U.S.C. §1311(a).

10 16. The General Permit contains certain absolute prohibitions. Discharge Prohibition
11 A(1) prohibits the direct or indirect discharge of materials other than stormwater (“non-stormwater
12 discharges”), which are not otherwise regulated by a NPDES permit, to the waters of the United
13 States. Discharge Prohibition A(2) prohibits stormwater discharges and authorized non-stormwater
14 discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water
15 Limitation C(2) prohibits stormwater discharges that cause or contribute to an exceedance of any
16 applicable water quality standards contained in a Statewide Water Quality Control Plan or the
17 applicable Regional Water Quality Control Board’s Basin Plan.

18 17. In addition to absolute prohibitions, the General Permit contains a variety of
19 substantive and procedural requirements that dischargers must meet. Facilities discharging, or
20 having the potential to discharge stormwater associated with industrial activity that have not
21 obtained an individual NPDES permit must apply for coverage under the State’s General Permit
22 by filing a Notice of Intent. The General Permit requires existing dischargers to file their Notices
23 of Intent before March 30, 1992.

24 18. Industrial dischargers must also develop and implement a Storm Water Pollution
25 Prevention Plan (“SWPPP”). The SWPPP must comply with the standards of Best Available
26 Technology Economically Achievable (“BAT”) and Best Conventional Pollutant Control
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1 Technology ("BCT"). The General Permit requires that an initial SWPPP be developed and
2 implemented before October 1, 1992. The SWPPP must, among other requirements, identify and
3 evaluate sources of pollutants associated with industrial activities that may affect the quality of
4 storm and non-storm water discharges from the facility and identify and implement site-specific
5 best management practices ("BMPs") to reduce or prevent pollutants associated with industrial
6 activities in storm water and authorized non-storm water discharges (Section A(2)). BMPs must
7 implement BAT and BCT (Section B(3)). The SWPPP must include: a description of individuals
8 and their responsibilities for developing and implementing the SWPPP (Section A(3)); a site map
9 showing the facility boundaries, storm water drainage areas with flow pattern and nearby water
10 bodies, the location of the storm water collection, conveyance and discharge system, structural
11 control measures, impervious areas, areas of actual and potential pollutant contact, and areas of
12 industrial activity (Section A(4)); a list of significant materials handled and stored at the site
13 (Section A(5)); a description of potential pollutant sources including industrial processes, material
14 handling and storage areas, dust and particulate generating activities, and a description of
15 significant spills and leaks, a list of all non-storm water discharges and their sources, and a
16 description of locations where soil erosion may occur (Section A(6)). The SWPPP must include
17 an assessment of potential pollutant sources at the facility and a description of the BMPs to be
18 implemented that will reduce or prevent pollutants in storm water discharges and authorized non-
19 storm water discharges, including structural BMPs where non-structural BMPs are not effective
20 (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
21 where necessary (Section A(9),(10)).

22 19. The General Permit requires dischargers to eliminate all non-stormwater discharges
23 to stormwater conveyance systems other than those specifically set forth in Special Condition
24 D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition
25 D(1)(b).

26 //

1 20. The General Permit requires dischargers commencing industrial activities before
2 October 1, 1992 to develop and implement an adequate written Monitoring and Reporting Program
3 no later than October 1, 1992. Existing facilities covered under the General Permit must
4 implement all necessary revisions to their monitoring programs no later than August 1, 1997.

5 21. As part of the monitoring program, dischargers must identify all storm water
6 discharge locations that produce a significant storm water discharge, evaluate the effectiveness
7 of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out
8 in the SWPPP are adequate and properly implemented. Dischargers must conduct visual
9 observations of these discharge locations for at least one storm per month during the wet season
10 (October through May) and record their findings in an Annual Report. Dischargers must also
11 collect and analyze storm water samples from at least two storms per year. Section B(5)(a) of the
12 General Permit requires that dischargers “shall collect storm water samples during the first hour
13 of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event
14 in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i)
15 requires dischargers to sample and analyze during the wet season for basic parameters, such as pH,
16 total suspended solids, electrical conductance, and total organic content or oil & grease, and
17 certain industry-specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic
18 chemicals and other pollutants likely to be in the storm water discharged from the facility. Section
19 B(5)(c)(iii) requires dischargers to sample for parameters dependent on a facility’s standard
20 industrial classification (“SIC”) code. Dischargers must also conduct dry season visual
21 observations to identify sources of non-storm water pollution. Section B(7)(a) indicates that the
22 visual observations and samples must represent the “quality and quantity of the facility’s storm
23 water discharges from the storm event.” Section B(7)(c) requires that “if visual observation and
24 sample collection locations are difficult to observe or sample... facility operators shall identify and
25 collect samples from other locations that represent the quality and quantity of the facility’s storm
26 water discharges from the storm event.”

1 22. Section B(14) of the General Permit requires dischargers to submit an Annual Report
2 by July 1 of each year to the executive officer of the relevant Regional Water Quality Control
3 Board. The Annual Report must be signed and certified by an appropriate corporate officer.
4 Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the Annual Report to
5 include an evaluation of storm water controls, including certifying compliance with the General
6 Permit. *See also* Sections C(9), C(10).

7 23. CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any
8 “person,” including individuals, corporations, or partnerships, for violations of NPDES permit
9 requirements and for unpermitted discharges of pollutants. CWA §§ 505(a)(1),(f) and 1362(5),
10 33 U.S.C. §§ 1365(a)(1), (f), and 1362(5). An action for injunctive relief under the Clean Water
11 Act is authorized by CWA § 505(a), 33 U.S.C. § 1365(a). Violators of the Clean Water Act are
12 also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all
13 violations, pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R.
14 §§ 19.1-19.4.

15 24. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has
16 been served on the United States Attorney General and the Administrator of the Federal EPA.

17 25. The Regional Water Quality Control Board has established water quality standards
18 for the San Francisco Bay in the Water Quality Control Plan for the San Francisco Bay Basin,
19 generally referred to as the Basin Plan. The Basin Plan includes a narrative toxicity standard
20 which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that
21 are lethal or that produce other detrimental responses in aquatic organisms.” The Basin Plan
22 provides that “[w]aters shall not contain suspended material in concentrations that cause nuisance
23 or adversely affect beneficial uses.”

24 26. The United States EPA adopted the National Toxics Rule (“NTR”) on February 5,
25 1993 and the California Toxics Rule (“CTR”) on May 18, 2000. *See* 40 C.F.R part 131. When
26 combined with the beneficial use designations in the Basin Plan, these Rules contain water quality
27

standards applicable to this discharge. The State Board, on April 26, 2000 adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* that contains requirements for implementation of the NTR and the CTR. Pursuant to 40 C.F.R part 131, the CTR “criteria are legally applicable in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the Clean Water Act.”

V. STATEMENT OF FACTS

27. Defendants own and operate a tile, marble, and kitchen cabinetry production facility located at 21105-B Cabot Boulevard in Hayward, California (the “Facility”). The Facility consists of one building, several storage areas, and a yard with paved areas. Six (6) storm drain inlets are located on site. The Facility is located within five hundred (500) feet of a drainage ditch which ultimately flows into the San Francisco Bay. Stormwater from the Facility enters the on-site storm drains or storm drains adjacent to the property. Stormwater is then conveyed through these storm drains which lead directly to San Francisco Bay, a water of the United States.

28. Industrial activities undertaken at the Facility fall within SIC Industry Group 1743 (Terrazzo, Tile Marble and Mosaic Work,) and include, but may not be limited to, the manufacture and storage of tile, marble, and wood products; heavy equipment storage, maintenance, and repair. Numerous activities including the storage and movement of tile, marble, and wood products, storage of waste, and storage, maintenance and repair of equipment and vehicles, take place outside and are exposed to rainfall. Oil, grease, and other pollutants associated with vehicle and equipment storage, maintenance, and repair flow unobstructed to at least two storm drains adjacent to the maintenance area. Tile, marble, and wood storage is located throughout the Facility. Dust and debris have been observed on the asphalt throughout the site, including in the storm drain inlets. During every rain event, rainwater flowing over exposed products, waste materials and accumulated pollutants at the Facility becomes contaminated with pollutants and flows untreated from the Facility into the storm drain system. This contaminated storm water flows through the

1 storm drain system into the San Francisco Bay, a water of the United States.

2 29. Management practices at the Facility are wholly inadequate to prevent the sources
3 of contamination described herein from causing the discharge of pollutants to waters of the United
4 States. The Facility lacks essential structural controls such as grading, berming, and roofing to
5 prevent rainfall and stormwater from coming into contact with materials stored outside and other
6 sources of contaminants generated from on site activities. The Facility lacks structural controls to
7 prevent the discharge of water once contaminated. The Facility lacks an adequate system or
8 filtration system to treat water once contaminated.

9 30. Vehicular and equipment traffic on the Facility property tracks dust and particulate
10 matter from the Facility onto the surrounding sidewalks and streets. Stormwater contact then
11 washes this pollution into the storm system and eventually into the receiving waters. Tires are a
12 known source of zinc and brake linings are a known source of copper. The vehicular and
13 equipment traffic at the Facility is sufficient to warrant the inclusion of copper and zinc in the list
14 of pollutants sampled for by Defendants in compliance with the General Permit. River Watch
15 contends Defendants have failed to sample for these metals in violations of the terms of the
16 General Permit which requires the discharger to sample for any and all pollutants for which
17 established criteria exist and might be present in the discharge above this criteria. Plaintiff alleges
18 these violations are ongoing.

19 31. Plaintiff is informed and believes and on such information alleges, that as a result
20 of the practices of Defendants at the Facility as enumerated in the Notice and herein, stormwater
21 containing pollutants harmful to fish, plant life, bird life, human health, and the beneficial uses of
22 the waters of San Francisco Bay, are being discharged from the Facility during every rain event
23 directly to storm drains that flow into San Francisco Bay.

24 32. Plaintiff is informed and believes and on such information alleges, that Defendants
25 have not fulfilled the requirements set forth in the General Permit for discharges from the Facility
26 due to the continued discharge of contaminated stormwater.

1 33. Plaintiff is informed and believes, and on such information alleges, that Defendants
2 have failed to develop and implement an adequate SWPPP for the Facility in violation of the
3 General Permit.

4 34. Plaintiff is informed and believes, and on such information alleges, that Defendants
5 have not developed and implemented adequate monitoring, reporting, and sampling programs for
6 the Facility, and have failed to file timely Annual Reports with the appropriate regulatory agency,
7 all in violation of the General Permit.

8 **VI. FIRST CLAIM FOR RELIEF**

9 **Violation of 33 U.S.C. § 1311(a), CWA § 301(a)**

10 **(Discharge of Pollutants to Waters of the United States Without a NPDES Permit)**

11 Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through
12 34 as though fully set forth herein, including all allegations in the Notice. Plaintiff is informed
13 and believes and on such information alleges as follows:

14 35. Defendants have violated and continue to violate the CWA as evidenced by the
15 discharge of pollutants from the Facility into waters of the United States discharges without having
16 obtained a NPDES permit as required by CWA §301(a) , 33 U.S.C. § 1311(a).

17 36. Defendants' violations are ongoing, and will continue after the filing of this
18 Complaint. Plaintiff alleges herein all violations which may have occurred or will occur prior to
19 trial, but for which data may not have been available or submitted or apparent from the face of the
20 reports or data submitted by Defendants to the Regional Water Quality Control Board or to
21 Plaintiff prior to the filing of this Complaint. Plaintiff will amend this Complaint if necessary to
22 address Defendants' State and Federal violations which may occur after the filing of this
23 Complaint. Each violation is a separate violation of the CWA.

24 37. Plaintiff alleges that without the imposition of appropriate civil penalties and the
25 issuance of appropriate equitable relief, Defendants will continue to violate the CWA as well as
26 State and Federal standards with respect to the enumerated discharges and releases alleged.

1 Further, that the relief requested in this Complaint will redress the injury to Plaintiff and its
2 members, prevent future injury, and protect the interests of Plaintiff's members which are or may
3 be adversely affected by Defendants' violations of the CWA.

4 **VII. SECOND CLAIM FOR RELIEF**

5 **Violation of CWA § 402(p), 33 U.S.C. § 1342(p)**

6 **(Discharging Pollutants in Violation of the General Permit)**

7 Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 through
8 37 as though fully set forth herein including all allegations in the Notice. Plaintiff is informed and
9 believes and on such information alleges as follows:

10 38. Defendants have violated and continue to violate the CWA as evidenced by their
11 violations of the General Permit as set forth in this Complaint and the Notice.

12 39. Defendants have violated and continue to violate an "effluent standard or limitation"
13 under CWA § 505(a)(1), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26, or an order issued by the State
14 with respect to such a standard or limitation.

15 40. By law and by the terms of the General Permit, violations of the General Permit are
16 violations of the CWA. *See* 40 C.F.R. § 122.41(a).

17 41. Defendants' violations are ongoing, and will continue after the filing of this
18 Complaint. Plaintiff alleges herein all violations which may have occurred or will occur prior to
19 trial, but for which data may not have been available or submitted or apparent from the face of the
20 reports or data submitted by Defendants to the Regional Water Quality Control Board or to
21 Plaintiff prior to the filing of this Complaint. Plaintiff will amend this Complaint if necessary to
22 address Defendants' violations of the General Permit which may occur after the filing of this
23 Complaint. Each violation is a separate violation of the CWA.

24 42. Plaintiff alleges that without the imposition of appropriate civil penalties and the
25 issuance of appropriate equitable relief, Defendants will continue to violate the CWA as well as
26 State and Federal standards with respect to the enumerated discharges and releases alleged.

1 Further, that the relief requested in this Complaint will redress the injury to Plaintiff and its
2 members, prevent future injury, and protect the interests of Plaintiff's members which are or may
3 be adversely affected by Defendants' violations of the General Permit.

4 **VIII. RELIEF REQUESTED**

5 WHEREFORE, Plaintiff prays that the Court grant the following relief:

- 6 1. Declare Defendants to have violated and to be in violation of the CWA;
- 7 2. Issue an injunction ordering Defendants to immediately operate the Facility in compliance
8 with the CWA and applicable effluent and receiving water limitations in the General Permit, as
9 well as State and Federal standards;
- 10 3. Enjoin Defendants from discharging non-storm water pollutants from the Facility to the
11 surface waters surrounding and downstream from the Facility until such time as Defendants have
12 obtained a NPDES permit or qualified the discharges as per Section D of the General Permit;
- 13 4. Enjoin Defendants from further violating the substantive and procedural requirements of
14 the General Permit or any other applicable NPDES permit relating to industrial activities at the
15 Facility;
- 16 5. Order Defendants to take appropriate actions to restore the quality of United States waters
17 impaired by their activities at the Facility as alleged in this Complaint;
- 18 6. Order Defendants to pay civil penalties per violation/per day for each violation of the CWA
19 as alleged in this Complaint pursuant to CWA §§ 309(d) and 505(a), 33 U.S.C. §§ 1319(d),
20 1365(a) and 40 C.F.R. §§ 19.1-19.4;
- 21 7. Order Defendants to pay Plaintiff's reasonable attorneys' fees and costs (including expert
22 witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,
- 23 8. Grant such other and further relief as may be just and proper.

24
25 DATED: April 25, 2013



SARAH DANLEY
Attorney for Plaintiff
CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbcglobal.net



***VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED***

February 13, 2013

Xin Mian (Henry) Pan
Owner, Operator and Site Manager
Uni-Tile & Marble, Inc.
21105-B Cabot Boulevard
Hayward, CA 94545

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Owner, Operator and Manager:

INTRODUCTION

The Clean Water Act ("CWA" or "Act") § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

California River Watch ("River Watch") hereby places Uni Tile & Marble, Inc., hereinafter referred to as "the Discharger," on notice, that following the expiration of sixty (60) days from the date of this Notice River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board Basin Plan as exemplified by as exemplified by the Discharger's unlawful discharge of pollutants into waters of the United States without a National Pollution Discharge Elimination System ("NPDES") permit for point source as opposed to non-point source discharges (*see* CWA §§ 402(a) and (b)).

This Notice addresses the Discharger's failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges - State Water Resources Control Board (State Water Board) Water Quality Order

No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000001 (as amended by Water Quality Order 92-12-DWQ) ("General Permit") issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p), its un-permitted discharges of contaminated stormwater, and its discharges of non-stormwater pollutants in violation of effluent limitations mandated in the General Permit.

NOTICE

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch has identified several General Permit violations and discharges from the Cabot Boulevard warehouse facility to surface waters in violation of the prohibition of the CWA with regard to discharging a pollutant from a point source to waters of the United States without a NPDES permit. CWA §301(a), 33 U.S.C. §1311(a).

2. *The activity alleged to constitute a violation.*

River Watch has set forth narratives below describing violations of the General Permit and of the discharges from points sources within the Cabot Boulevard warehouse facility to waters of the United States, describing with particularity specific incidents referenced in the California State Water Resources Control Board's Public Reports and other public documents available to the Discharger and incorporates by reference records cited above from which descriptions of specific incidents were obtained.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is Uni-Tile & Marble, Inc., identified as the Discharger, and those of its employees responsible for compliance with the General Permit.

4. *The location of the alleged violation.*

The location of the alleged violations is the Uni-Tile & Marble facility located at 21105 Cabot Boulevard in Hayward, California.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined both RWQCB and the Discharger's records from the period from February 8, 2008 through February 8, 2013. The range of dates covered by this Notice is from February 8, 2008 through February 8, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates currently covered by this Notice. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this Notice is California River Watch, a non-profit corporation organized under the laws of the State of California, located at 290 S. Main Street, #817, Sebastopol, CA, 95472. River Watch is dedicated to the protection, enhancement and restoration of the surface and groundwaters of the State of California including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California. River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys.

River Watch has retained legal counsel with respect to the violations set forth in this Notice. All communications relating to this Notice should be addressed to:

Jack Silver, Esq.
Law Office of Jack Silver
Jerry Bernhaut, Esq.
P.O. Box 5469
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Tel. (707) 528-8175
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REGULATIONS

The CWA regulates the discharge of pollutants into navigable waters, including the discharge of pollutants through stormwater. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA §402, 33 U.S.C. §1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards and limitations specified in a NPDES Permit define the scope of the authorized exception to the 33 U.S.C. §1311(a) prohibition, such that the violation of a permit limit places a polluter in violation of 33 U.S.C. §1311(a), and thus

in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. §1365 to enforce effluent standards or limitations, including violations of 33 U.S.C. §1311(a), 33 U.S.C. §1342(p), and 33 U.S.C. §1365(f)(1).

Clean Water Act § 402(p)(4)(A) required the EPA to establish regulations for permits for discharges of stormwater associated with industrial activity. The EPA's stormwater discharge regulations provide that, "Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit." 40 C.F.R. § 122.26(c)(1). The Ninth Circuit has observed that "the language 'discharges associated with industrial activity' is very broad. The operative word is 'associated.' It is not necessary that stormwater be contaminated or come into direct contact with pollutants; only association with any type of industrial activity is necessary." *See Natural Resources Defense Council, Inc. v. EPA*, 966 F.2d 1292, 1304 (9th Cir. 1992).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the agency operates satisfies certain criteria. *See* 33 U.S.C. §1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary Regional Water Quality Control Boards to issue NPDES permits. The entity responsible for issuing NPDES permits, including municipal stormwater permits, and otherwise regulating discharges in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The General Permit prohibits the discharge of material other than stormwater to waters of the United States, unless such discharges are regulated under a NPDES permit; and prohibits the discharge of stormwater which causes or *threatens to cause* pollution, contamination, or nuisance.

The General Permit requires stormwater dischargers to comply with its terms, including the filing of a Notice of Intent ("NOI") to be covered under the General Permit; the development and implementation of a Storm Water Pollution and Prevention Plan ("SWPPP"); and, the development and implementation of a Monitoring and Reporting Program. Dischargers are required to develop Best Management Practices ("BMP") using Best Available Technology ("BAT") and best conventional technology ("BCT") to control and/or eliminate pollution. Dischargers must either prevent unauthorized non-stormwater discharges or apply for a separate NPDES stormwater permit for any of facility or operation.

BACKGROUND

The Discharger owns and/or operates the warehouse facility located at 21105 Cabot Boulevard, in the City of Hayward, Alameda County, California. The 175,000 ft² facility processes tile and marble as well as kitchen cabinetry. In addition, the Discharger sells and installs these products. There are large quantities of raw materials and final products stored throughout the site. The majority of the site is impermeable asphalt, concrete and roofing material. Stormwater on the site flows toward six (6) storm drain inlets which flow into an on-site drainage ditch which then flows through a series of channels into San Francisco Bay, a water of the United States. A portion of the Discharger's operations occur in the open air. Stormwater therefore comes into contact with these operations.

In 2006, the City of Hayward notified the Discharger of its obligation to comply with federal and state industrial stormwater discharge requirements, and provided a copy of the notification to the RWQCB. In 2007, the RWQCB sent a notice of violation to the Discharger based on the Discharger's continuing failure to comply with industrial stormwater discharge requirements. In July 2008, the RWQCB inspected the Cabot Boulevard site. Dust and slurry were found accumulating in the stone cutting area. Plastic sheeting was in various stages of disintegration. All of these materials could be mobilized into the storm drain inlets located at the site. In August 2009, the RWQCB received a Notice of Intent from the Discharger to comply with the terms of the General Permit. The NOI was approved and the Discharger was issued Waste Discharger Identification ("WDID") number 2011022285.

The RWQCB issued more than one notice of violations to the Discharger in 2010 for failure to file Annual Reports. The RWQCB inspected the facility again that year, finding accumulations of debris and dust throughout the site, improperly maintained storm drain inlets, equipment maintenance that failed to meet minimum requirements, and improper employee and contractor training – all violations of the terms of the General Permit. Also, the Discharger failed to prepare and submit a SWPPP. In its 2010-2011 Annual Report (filed several months late) the Discharger claimed it was unaware of this obligation, and finally prepared a SWPPP in late 2011.

The RWQCB notified the Discharger by way of formal inspection reports, that the Discharger's current practices at the warehouse facility were allowing unauthorized non-stormwater discharges to reach the storm drain and eventually San Francisco Bay. The RWQCB inspector reported that plastic debris, dust, slurry, and particulates were reaching the storm drain and would therefore be washed away in the case of a rain event.

The RWQCB's inspection report of 2011 includes the below identified failures by the Discharger to implement BMPs on the Cabot Boulevard facility:

- Accumulation of debris, dust, particulates, trash, and styrofoam on the storm drain inlets and in the storm drains themselves;
- Equipment repair performed in the open air; spills were neither contained nor cleaned up;
- Accumulation of dust and particulates from the outdoor stone cutting area in areas near two (2) of the storm drains;
- Disposal of empty containers and other wastes in heaps and piles, rather than bins or other appropriate containers;
- Absence of a centralized storage area for chemical wastes.

VIOLATIONS

River Watch contends that for the period February 1, 2008 to February 1, 2013, the Discharger has been in violation of the General Permit and thereby in violation of the CWA by:

- 1) Allowing materials other than storm water (non-storm water discharges) to discharge either directly or indirectly to waters of the United States;
- 2) Failing to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants; and
- 3) Failing to develop and implement a SWPPP that complies with the requirements in Section A of the General Permit, and that includes BMPs that achieve BAT/BCT which constitute compliance with this requirement.

One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to a facility's storm drain system. Unauthorized non-storm water discharges at the Discharger's warehouse facility are generated from a wide variety of pollutant sources including dust and particulates from stone cutting operations, improperly disposing of plastic and other debris, and maintaining equipment in a way that allows pollutants to enter the storm drain system. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping must be

addressed through BMPs. The Discharger has inadequately identified and inadequately assessed all potential sources of pollutants and has failed to describe the appropriate BMPs necessary to reduce or prevent these potential pollutants in its SWPPP.

The Discharger's SWPPP does not evaluate all potential pollution conveyances to determine whether they convey unauthorized non-storm water discharges to the storm drain system. The Discharger has failed to sample a stormwater event in the two (2) years during which it has submitted Annual Reports. The Discharger claims that no samples were taken because there was no runoff because of light rain; that the rain that did fall occurred outside of business hours; and, that three working days had not passed between rain events.¹ The failure to sample stormwater events is a violation of the General Permit.

The Discharger will continue to be in violation of the SWPPP requirements every day it discharges non-storm water and storm water containing pollutants without developing and implementing an adequate SWPPP for the Cabot Boulevard warehouse facility.

In addition, River Watch contends the Discharger has violated CWA §402(a) which prohibits the discharge of a pollutant from a point source without a NPDES permit. 33 U.S.C. §1342(a). As discussed above, the Discharger has discharged pollutants, including plastic waste, dust and other wastes from point sources on the Cabot Boulevard warehouse facility, which point sources include equipment, stored materials, and the storm drain system and outfall to the drainage ditch. These discharges are reaching the San Francisco Bay, a water of the United States. River Watch contends these violations will continue until such time as the discharges cease, or the Discharger acquires an individual NPDES Permit for the point source discharges.

Inadequate BMPs with respect to the Cabot Boulevard warehouse facility include the following activities or omissions:

- Dust and other particulates are allowed to accumulate in significant quantities throughout the site.
- Storm drain inlets are improperly maintained and do not have adequate screens to prevent unauthorized discharges from reaching nearby surface waters.
- Equipment is improperly stored and repaired on the site in non-contained maintenance and storage areas.

¹ Other industrial dischargers throughout the San Francisco Bay Area were able to sample at least two rain events both in the years 2010-2011 and 2011-2012.

- No centralized storage areas exist for the containment of chemical wastes.
- Failure to train employees or improper training of employees with respect to preventing unauthorized stormwater discharges.

REMEDIAL MEASURES REQUESTED

1. Updating of the SWPPP to include:
 - a. Identification of all potential pollutants and sources of those pollutants;
 - b. Current BMPS and new BMPS to prevent unauthorized non-stormwater discharges.
 - c. Updating of the Site Map to include all sources of potential pollutants, sheet flow direction and groundwater flow direction, and locations of all industrial activities on site.
2. Updating of BMPs to include:
 - a. Proper installation and securing of storm drain inlet screens and a regular maintenance schedule;
 - b. Covering of material piles and other sources of pollutants to prevent unauthorized storm water discharges;
 - c. Proper training of all employees and contractors to ensure compliance with the General Permit;
 - d. Ensuring proper housekeeping and regular sweeping of the site; and,
 - e. Provision of proper containers and storage for hazardous wastes and other debris.
3. Compliance with CWA §402(a) by either eliminating discharges of pollutants from a point source to water of the United States without a NPDES permit; or applying for and receiving an individual NPDES pollutant discharge permit.

CONCLUSION

The violations as set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. The members' health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as identified in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for these violations. If the Discharger wishes to pursue such discussions, it is suggested that a dialog be initiated soon so that discussions may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Regional Administrator
U.S. Environmental Protection Agency - Region 9
75 Hawthorne St.
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812

Xin Mian Pan
Registered Agent For Service
Uni-Tile & Marble, Inc.
3136 San Bruno Avenue
San Francisco, CA 94134

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Xin Mian (Henry) Pan
Owner, Operator and Site Manager
Uni-File & Marble, Inc.
21135-B Cabot Boulevard
Hayward, CA 94545

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

ALEX WANG

C. Date of Delivery

2-9

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

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Law Office of Jack Silver
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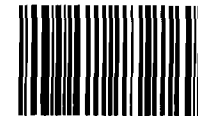
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